

Application Number 10/687,296  
Amendment in response to Office Action mailed October 5, 2007

**REMARKS**

This Amendment is responsive to the Office Action dated October 5, 2007. Applicant has amended claims 10 and 65 and canceled claim 11. Claims 10, 12-16 and 55-70 are pending. Applicant respectfully requests further examination and withdrawal of the rejections set forth in the Office Action in view of the above amendments and the following remarks.

**Allowable Subject Matter**

The Office Action indicated that claims 58 and 70 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates this indication of allowability with respect to claims 58 and 70. However, Applicant declines to amend claims 58 and 70 at this time, and submits that the independent claims as currently amended are allowable over the applied references for the reasons discussed below.

**Claim Rejections Under 35 U.S.C. §§ 102(b)/ 103(a)**

In the Office Action, claims 10, 14-16, 55, 62 and 63 under 35 U.S.C. § 102(e) were rejected as being anticipated by Brockway (U.S. Patent No. 6,509,674). The Office Action also rejected claims 10-13, 56, 57, 59, 60 and 65-69 under 35 U.S.C. § 102(b) as being anticipated by Mills (U.S. Patent No. 5,080,663). Additionally, the Office Action rejected claim 61 under 35 U.S.C. § 103(a) as being unpatentable over Mills in view of Bombeck (U.S. Patent No. 4,981,470), and claim 64 under 35 U.S.C. § 103(a) as being unpatentable over Brockway in view of Bombeck. Applicant respectfully traverses these rejections to the extent such rejections may be considered applicable to the claims as amended. The applied references, either alone or in combination, fail to disclose each and every feature of the claimed invention, as required by 35 U.S.C. 102, and provide no teaching that would have suggested the desirability of modification to include such features.

The Office Action maintained the rejection of independent claim 10 as being anticipated by Brockway. With respect to Applicant's argument in the previous Amendment that the expandable securing structure 312D of Brockway is not configured to extend through tissue, the Office Action stated that FIG. 7 of Brockway clearly depicts element 312D as being expanded

Application Number 10/687,296

Amendment in response to Office Action mailed October 5, 2007

within tissue. Applicant continues to disagree with the conclusion that Brockway discloses a securing structure which allows the tissue attachment surface to be brought into contact with tissue at a preselected attachment site when in a retracted position, and is movable to an extended position in which it extends through tissue in contact with the attachment surface, as was required by independent claim 1 as previously presented. Although FIG. 7 does conceptually depict that element 312D has been expanded after housing 300 is advanced to a position within the myocardium, nothing in the portions of Brockway cited in the Office Action suggests that element 312D in fact extends through the myocardial tissue that surrounds housing 300, as opposed to, for example, pressing against the tissue to secure the device 105 within the tissue.

Nevertheless, in the interest of advancing the prosecution of this application, Applicant has amended independent claim 1 to substantially recite the subject matter previously recited in claim 11 (now canceled). In particular, Applicant has amended independent claim 1 to recite that the housing comprises a concavity and the tissue attachment surface is a surface within the concavity. As implicitly recognized in the Office Action by not rejecting now canceled claim 11 based on Brockway, Brockway, alone or in combination with the other references applied in the Office Action, fails to disclose or suggest a housing comprising a concavity and a tissue attachment surface that is a surface within the concavity, as required by amended independent claim 10. Applicant respectfully requests that the rejections of claims 10, 14-16, 55 and 62-64 based on Brockway be withdrawn.

The Office Action also rejected independent claims 10 and 65 as previously presented as being anticipated by Mills. In particular, the Office Action cited column 2, lines 57-61 and the figures, and argued that cavity 6 and body 2 are a housing with a tissue attachment surface. The Office Action also argued that tag 42, flat head 44, cross-piece 46 and connecting member 48 are a securing surface, and article 38 is a physiological parameter detector that is carried by the housing.

While Applicant does not agree, Applicant has amended independent claims 10 and 65 to clarify the claimed subject matter and advance prosecution of the pending application. For example, claims 10 and 65 as amended require a monitoring device including a housing, a securing structure for securing the monitoring device, and at least one physiological parameter detector at least one of on or within the housing. Support for these amendments may be found

Application Number 10/687,296

Amendment in response to Office Action mailed October 5, 2007

throughout Applicant's originally-filed application including, for example, page 13, line 30 to page 14, line 5 and page 17, lines 12-20.

Mills fails to disclose or suggest a monitoring device including a securing structure for securing the monitoring device and at least one physical parameter detector at least one of on or within the housing, as required by independent claims 10 and 65, as amended. Mills is generally directed to a device for sewing an article to tissue.<sup>1</sup> The device may be used to attach a tag to tissue, and the tag may be attached to a load, such as a sensor.<sup>2</sup> The Mills reference teaches that the sensor and tag are separate devices from the device which the Office Action cited as including body 2 and cavity 6.

Thus, the Office Action's assertion that Mills discloses a monitoring device comprising each and every limitation of Applicant's claims 10 and 65 is incorrect. Instead, Mills discloses a first device (an article) that may include a tag, flexible cord and a sensor, and a second device (the sewing device) that includes a housing having a cavity. Accordingly, Mills does not disclose or suggest a monitoring device comprising a housing that has a cavity and at least one physiological parameter detector that is at least one of on or within the housing, as required by amended independent claims 10 and 65.

For at least these reasons, Brockway and Mills, either alone or in combination, fail to disclose each and every limitation set forth in claims 10 and 65. Bombeck fails to provide any disclosure sufficient to overcome the deficiencies of Brockway and Mills. Claims 12-16 and 55-64 depend from claim 10, and claims 66-70 depend from claim 65, and are thus in condition for allowance for at least the reasons presented above with respect to independent claims 10 and 65.

For at least these reasons, the Office Action has failed to establish a *prima facie* case for anticipation of Applicant's claims 10, 12-16 and 55-70 under 35 U.S.C. § 102(b), or nonpatentability of claims 61 and 64 under 35 U.S.C. § 103(a). Withdrawal of these rejections is respectfully requested.

---

<sup>1</sup> Mills, Col. 1, ll. 16-18.

<sup>2</sup> Mills, Col. 2, ll. 57-67.

Application Number 10/687,296  
Amendment in response to Office Action mailed October 5, 2007

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims.

In view of the clear distinctions identified above between the current claims and the applied prior art, Applicant reserves further comment at this time regarding any other features of the independent or dependent claims. However, Applicant does not necessarily admit or acquiesce in any of the rejections or the Office Action's interpretations of the claims or the applied references. Applicant reserves the right to present additional arguments with respect to any of the independent or dependent claims.

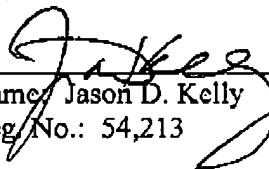
Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

1/7/08

SHUMAKER & SIEFFERT, P.A.  
1625 Radio Drive, Suite 300  
Woodbury, Minnesota 55125  
Telephone: 651.735.1100  
Facsimile: 651.735.1102

By:

  
Name: Jason D. Kelly  
Reg. No.: 54,213